

Filed on:27/08/2012.

Disposed on:16/04/2013.

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM TIRUNELVELI.

Present: Thiru.M.Ramachandran, B.Sc., B.L., President.

Thiru.S.Balasubramonian, Member I.

Tmt.V.Jesintha, Member II.

(Tuesday the 16th day of April 2013)

CONSUMER COMPLAINT No.121/2012.

A.Bramma @ Piramanayagam,

S/o.P.Ayyam Pillai,

461E, V.O.C. Nagar, D Colony,

Maharajanagar Post,

Tirunelveli.

...Complainant.

..Vs..

The Public Information Officer,

Regional Transport Office,

583, Ethamozhi Road,

Pattasalianvilai,

Nagercoil.

Kanyakumari District.

...Opposite party.

This complaint came before us for final hearing on 3-4-2013 in the presence of party in person for the complainant and Thiru S.Jafer Ali, Advocate for the opposite party and having stood over till this day for consideration this Forum made the following:

ORDER

This complaint has been filed under section 12 of Consumer Protection Act 1986.

1) The averments in the complaint are as follows: The complainant has sent a petition under RTI Act on 9-6-2012 to the opposite party seeking some informations and the opposite party has received the same but has not furnished the particulars within 30 days stipulated period under the RTI Act which amounts to deficiency in service on his part. Hence the complainant has filed this complaint to direct the opposite party to furnish the information as sought for by the complainant and to pay Rs.25,000/- as damages for the deficiency in service of the opposite party and to pay the cost of the proceedings.

2) The averments in the counter of the opposite party are as follows: The complaint is not maintainable either in law or on facts and it is liable to be dismissed in limine. As per the RTI Act all Indian citizens shall have the right to information subject to the provisions of the Act. The complainant has not produced any documentary evidence before the opposite party regarding the citizenship as Indian or the residential proof to have the right to information and hence in the absence of the documents he cannot claim any right under the RTI Act. The opposite party is having its office at Nagercoil in Kanyakumari District. The complainant has not produced any records before this Forum that the cause of action has arisen within the territorial jurisdiction of this Forum or has not declared in the complaint that the cause of action has arisen within the territorial jurisdiction of this Forum and hence the complaint deserves to be dismissed for lack of jurisdiction among other legal grounds. The letter dated 7-6-2012 addressed to the opposite party contains certain questions addressed to the Public Information Officer which cannot be answered by him. As per the RTI Act only the informations available with the RTO Office alone can be furnished by him. In this case since the applicant has asked for some questions the Public Information Officer has no liability to give answers to the questions. Hence the question of denial of information will not arise under the RTI Act and accordingly he cannot ask for any relief under the Consumer Protection Act. The Personal Assistant to the Regional Transport Officer is designated as Public Information Officer and the Personal Assistant post is vacant from 1-5-2012 and hence the Office Superintendent is discharging his duties of the Personal Assistant with regard to the Motor Vehicle Act only. So far the Government has not sent any communications to the office directing the Office Superintendent to function as the Public Information Officer in the

absence of Personal Assistant to RTO. In the above circumstances the letter sent by the application dated 7-6-2012 was processed by office as per the procedure followed in the office immediately and a suitable reply was sent to the applicant accordingly without any deficiency in service. The opposite party has no intention to disobey the law of the land and hence no deficiency was committed by him. The complainant was not keen in getting the particulars under the RTI Act and hence he has not filed any appeal under the RTI Act. He has filed this case just to harass the Government officials who are discharging their duties within the frame work of acts and rules. As per the RTI Act this Forum has no jurisdiction to entertain this complaint. Hence the complaint is liable to be dismissed.

3) The points for consideration are:

1. Whether section 22 of Right to Information Act has got any overriding effect on the provision of the Consumer Protection Act 1986?
2. Whether section 23 of RTI oust the jurisdiction of the Consumer Forum?
3. Whether the complainant is a consumer who hires or avails the service for consideration?
4. Whether this Forum has got the territorial jurisdiction to entertain this complaint?
5. Whether the opposite party has committed deficiency in service and if so;
6. To what relief the complainant is entitled to?

4) Points No.1 to 3: The opposite party has stated that section 22 of the Right to Information Act has got overriding effect to the Act over any other law for the time being in force and section 23 of the Right to Information Act provides that no courts shall entertain any suit application or other proceedings in respect of any order made under this Act, no such order shall be called in question otherwise than by way of appeal.

The National Commission has held in the case of Dr.S.P.Thirumalai Rao vs. Municipal Commissioner of Mysore Corporation, Mysore reported in III (2012) CPJ Page 72 that section 22 of RTI Act does not have any overriding effect on the Consumer Protection Act 1986. On the question of bar of jurisdiction of courts the National Commission has held that section 3 of the Consumer Protection Act provides an additional remedy that the bar of jurisdiction under this section is only against the courts as also in respect of the order made under the act but in this case the averment of the complainant is that the opposite party had not passed any order on account of which the question of bar of jurisdiction does not arise. The National Commission has held in the above case that the complainant had availed of services under the said Act for consideration by paying fee and had sought information under the said act which was not supplied to him which amounts to deficiency of service. The complainant is thus a consumer vis-à-vis information sought on payment under the said Act.

The counsel for the opposite party relied on citations made by the National Commission in a subsequent case in the case of T.Pundalika Vs. Revenue Department (Service Division) Government of Karnataka in R.P.No.4061/2010 in which the Karnataka State Commission has held that the complainant cannot be considered as a consumer as defined under Consumer Protection Act since there is a remedy available for the complainant to approach the appellate authority u/s.19 of the RTI Act 2005. The National Commission has agreed with the above view taken by the State Commission and they have held that the petitioner cannot be claimed to be a consumer under the Consumer Protection Act. The National Commission has held in the above case that since there is a remedy available for the complainant to approach the appellate authority the complainant cannot be claimed to be a consumer.

The Hon'ble Supreme Court has held in the case of National Seeds Corporation Ltd., Vs. M.Madhusudhan Reddy and Another reported in (2012) 3 MLJ Page 166 (SC) that the remedy of arbitration is not the only remedy available to the consumer. Rather it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Protection Act. If the complainant opts for the remedy of arbitration then it may not be possible to say that he cannot subsequently file a complaint under the Consumer Protection Act. However if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking section 8 of the Arbitration and Conciliation Act, 1996. Moreover the plain language of Section 3 of the Consumer Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force. On the same analogy if an appeal provision is available in the Act we cannot compel the complainant to file a complaint before the appellate authority since U/s.3 of the Consumer Protection Act the remedy available is in addition to and not in derogation of the provisions of any other law for the time being in force.

The Hon'ble Supreme Court has also held in the case of Trans Mediterranean Airways Vs. Universal Exports and another reported in 2011(8) MLJ Page 570 that the protection provided under Consumer Protection Act to consumers is in addition to the remedies available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy.

In the case of Skypay Couriers Limited Vs. Tata Chemicals Limited reported in 2000 (3) MLJ Page 74 the Hon'ble Supreme Court has held even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain deficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force.

In the case of Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M.Lalitha reported in 2004 (IV) M.L.J. Page 94 the Hon'ble Supreme Court has held that the

trend of the decisions of this Court is that the jurisdiction of the Consumer Forum should not and would not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter which falls within the jurisdiction of civil court or any other Forum as established under some enactment. The above observations of the Hon'ble Supreme Court makes it clear that since there is another remedy is available for the complainant to approach the appellate authority we cannot direct him to approach the appellate authority and there is no bar in taking the case on file by the Consumer Forum.

5) The counsel for the opposite party has argued that in some of the cases relating to Right to Information Act the Madurai Bench of the Hon'ble Madras High Court has stayed the proceedings of this Forum under article 226 of Constitution of India on the ground that the complainants are having alternate remedy of filing appeal before the statutory authority. The Hon'ble Supreme Court has held in the case of *Cisily Kallarackal Vs. Vehicle Factory* reported in 2012(VI) CTC page 217 that the order passed by the Commission (National Commission) are incapable of being questioned under the Writ jurisdiction of the High Court as a statutory appeal in terms of section 27(a) would lie to the Supreme Court. On the same analogy since statutory appeal lies on the orders passed by the District Forum to the State Commission and then to the National Commission the writ jurisdiction of the High Courts under article 226 of Constitution of India cannot be exercised.

6) In the above circumstances we come to the conclusion that the complainant is a consumer as per the provisions of the Consumer Protection Act and just because there is appeal provision in the Right to Information Act, the complaint is not barred to file a case before the Consumer Forum since U/s.3 of the Consumer Protection Act the remedy available to a consumer is an optional remedy and it is in addition to and not in derogation of the provisions of any other law for the time being in force. Hence we decide these points accordingly.

7) Point No.4: The opposite party has stated that this Forum has no territorial jurisdiction to entertain this complaint since the office of the opposite party is situated at Kanyakumari District. The opposite party has also stated that no cause of action has arisen within the jurisdiction of this Forum and hence this Forum has no jurisdiction to entertain this complaint. Simply because the complainant has sent the application to the opposite party seeking informations from Tirunelveli it cannot be presumed that he has cause of action to file this complaint before this Forum. As per section 11(2) of the Consumer Protection Act a complaint shall be instituted in a District Forum within the local limits of whose jurisdiction the opposite party resides or carries of business or the cause of action wholly or partly arises. The opposite party side counsel has argued since the opposite party is situated at Kanyakumari District and the cause of action or part of cause of action has not arisen within the limits of this Forum the complaint is not maintainable before this Forum and hence it is liable to be dismissed. The counsel for the opposite party relied on citations reported in I (1995) CPJ Page 235 (NC), III (1998) CPJ Page 568, III (2001) CPJ Page 37 (NC), I (2001) CPJ Page 21 (NC), IV (2003) CPJ Page 26 (NC), II (2003) CPJ Page 174, II (2004) CPJ Page 547, I (2006) CPJ

Page 408, IV (2009) CPJ Page 40 (SC), IV (2012) CPJ Page 45 (NC) Wherein the National Commission and State Commissions and Hon'ble Supreme Court have held that a mere posting of an order cannot call for jurisdiction at a place where the letter is posted that the mere fact that the amount of initial deposit for the flat was remitted through the branch of the Vijaya Bank at Chandigarh will not entitle the complainant that any part of cause of action had arisen at Chandigarh, mere issuance of ticket from Chennai by travel agent would not bring it within territorial jurisdiction of the Forum etc., Like that in this case just because the complainant had filed a petition seeking some informations from the opposite party from Tirunelveli it will not vest territorial jurisdiction in this Forum, the counsel for the opposite party argued. In this case the complainant had filed a petition seeking some informations from the opposite party under the RTI Act Public Information Officers or officers designated by the public authorities in all administrative units or offices under it to provide informations to the citizens requesting for informations under the Act. So every citizen has a right to seek information from the Public Information Officers and there is no restriction that the citizens have right to seek informations from the Public Information Officers of the concerned area only. It is not necessary that the citizen who seeks the information from the Public Information Officer has to file a case before the Consumer Forum where the Public Information Officer resides or carry on business. Since the complainant has sought for some informations from the opposite party from Tirunelveli part of cause of action has arisen within the territorial jurisdiction of this Forum and hence the contention of the opposite party that this Forum has no territorial jurisdiction to entertain this complaint does not seems to be correct.

8) Points No.5 and 6: The opposite party has stated that under RTI Act only a citizen of India has the right to seek informations subject to the provision of the Act and since the complainant has not produced any documentary evidence before the Public Information Officer regarding his citizenship as Indian or residential proof he has no right to seek any information from the opposite party. The complainant has specifically stated in the complaint that he is residing at Tirunelveli in a particular address and this fact has not been contested by the opposite party. Hence the contention of the complainant that the complainant has not filed any proof of his residential address or he is not a citizen of India does not seems to be correct. The next contention of the opposite party is that the Personal Assistant of the RTO office has been appointed as Public Information Officer of the RTO Office and one Mr.Joseph was working as Personal Assistant to RTO Nagercoil, he retired from service on 30-4-2012 and the post is still vacant and no officer has been posted to the above post. He would further contend that the senior superintendent of RTO office one Mr.Joseph Xavier was given additional charge of Personal Assistant post from 1-5-2012 and he has not been designated with the powers of Public Information Officer as per RTI Act either by the Transport Commissioner or Government. The said Joseph Xavier has also been transferred from Nagercoil RTO office to Sankarankovil Transport Office from 14-7-2012 and after that Tmt.Petchiammal who was working as Superintendent in that office was placed in additional charge of the Personal Assistant post from 19-7-2012, but no office order was given to her either to function as Personal Assistant or Public Information Officer. The counsel for the opposite party would contend that since the post of Public Information Officer in the RTO Office Nagercoil is

vacant and no additional charge has been given to Tmt.Petchiammal to function as Public Information Officer it could not be contended that the opposite party has committed deficiency in service by non furnishing the particulars within the stipulated period. Tmt.Petchiammal has been placed in additional charge as Personal Assistant to the Regional Transport Officer and the Personal Assistant has been designated as the Public Information Officer of the RTO office as contended by the complainant side counsel. Hence whoever discharges the work of Personal Assistant to the R.T.O. is designated authority for the Public Information Officer Post. Hence the contention of the opposite party's counsel that the Public Information Officer post in the R.T.O. Office Nagercoil is vacant and hence nobody could be blamed for non furnishing of particulars within the stipulated period seems to be not accepted.

9) The complainant has stated that he has filed a petition under RTI Act seeking some informations from the opposite party on 7-6-2012 and the opposite party has not furnished the particulars within the statutory period of 30 days which amounts to deficiency in service on his part.

10) To prove the case of the complainant proof affidavit of the complainant has been filed and Ex.A1 and Ex.A2 have been marked. Ex.A1 is the copy of the petition dated 7-6-2012. Ex.A2 is copy of the acknowledgement card. The opposite party has stated that they have furnished the particulars to the complainant and hence they have not committed any deficiency in service. The opposite party has not stated specifically in the counter on what date he has furnished the particulars to the complainant. To prove the case of the opposite party proof affidavit of one Petchiammal has been filed and Ex.B1 to Ex.B8 have been marked. Ex.B1 is copy of the petition filed by the complainant under RTI Act dated 7-6-2012. Ex.B2 is copy of the extract from the opposite party office register to show that the above letter has been received in the opposite party office on 12-6-2012. Ex.B3 is copy of notes regarding the complainant's petition from 15-6-2012 to 18-9-2012. Ex.B4 is copy of particulars sent to the complainant on 19-7-2012. Ex.B5 is copy of another letter furnishing the particulars to the complainant on 17-9-2012. Ex.B6 is return cover sent to the complainant's address. Ex.B7 is copy of order permitting one S.Joseph, Personal Assistant, Regional Transport Office, Nagercoil to retire from service on 20-4-2012 afternoon. Ex.B8 is copy of transfer order of S.Joseph Xavier, Superintendent, R.T.O. Office, Nagercoil to Sankarankovil Unit Office. The opposite party has stated that they have furnished the particulars to the complainant under Ex.B4 on 19-7-2012. They have not filed any document to prove that the above letter was sent to the complainant's address. Moreover the date on which Ex.B4 was sent to the complainant was not filled up in the letter reference number. The date 08-2012 in the reference number has been corrected as 07, it creates a doubt whether Ex.B4 letter was sent on 19-7-2012 to the complainant or on another date. The opposite party would contend that after filing of this complaint before this Forum they have sent another copy of letter containing informations to the complainant on 17-9-2012 under Ex.B5 and that thapal was returned undelivered as insufficient address on 3-10-2012. The complainant would contend that Ex.B6 cover has been sent to Tirunelveli wrongly, whereas the complainant is residing at Tirunelveli 11 and in the address in Ex.B6 cover and acknowledgement card the

number 1 has been added subsequently to show that the above letter was sent to Tirunelveli 11. The endorsement made by the postal authorities on the back of Ex.B6 cover would prove that the above letter was not sent to the correct address of the complainant to Tirunelveli 11.

11) In the circumstances stated above, we come to the conclusion that the opposite party has not proved that he has furnished the particulars within 30 days to the complainant and hence they have committed deficiency in service and hence the complainant is entitled for the relief as prayed for. We decide these points accordingly.

12) In the result, the complaint is allowed and the opposite party is directed to furnish the particulars as sought for by the complainant and to pay Rs.15,000/- as compensation for the mental agony and sufferings caused to the complainant and to pay Rs.3000/- towards cost of the proceedings, within a period of two months from the date of this order, failing which the complainant is at liberty to execute this order U/s.25 and 27 of the Consumer Protection Act 1986.

Dictated to the Steno-typist, taken and typed by him, and corrected by me and pronounced by us in the Open Forum on this the 16th day of April 2013.

Member II.

Member I.

President.

Annexure

I) List of documents marked for the complainant:

1. Ex.A1/7-6-12 : Copy of the petition
2. Ex.A2/ : Copy of the acknowledgement card.

II) List of documents marked on the side of the opposite party:

1. Ex.B1/7-6-12 : Copy of the petition filed by the complainant under RTI Act.
2. Ex.B2/ : Copy of the extract from the opposite party office register
3. Ex.B3/ : Copy of notes regarding the complainant's petition
4. Ex.B4/19-7-12 : Copy of particulars sent to the complainant
5. Ex.B5/17-9-12 : Copy of another letter furnishing the particulars to the complainant

6. Ex.B6/ : Return cover sent to the complainant's address.
7. Ex.B7/ : Copy of order permitting one S.Joseph, Personal Assistant,
Regional Transport Office, Nagercoil who retired from service
on 20-4-2012 afternoon.
8. Ex.B8/ : Copy of transfer order of S.Joseph Xavier, Superintendent,
R.T.O. Office, Nagercoil to Sankarankovil Unit Office.

Member II.

Member I.

President.

18/04/13